

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

ROBERT NELSON HOWELL, JR.
Reg. # 09232-026

PETITIONER

v.

No. 2:12-cv-87-DPM-BD

T.C. OUTLAW, Warden,
FCI Forrest City

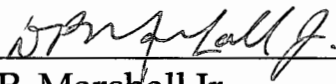
RESPONDENT

ORDER

Magistrate Judge Beth Deere has recommended that Howell's petition for a writ of habeas corpus be dismissed for failure to make out a due process violation that would justify any relief. *Document No. 11*. Judge Deere ably addressed the facts set out in Howell's petition. But Howell has expanded those facts in a timely objection. *Document No. 12*. Howell now says that Hodges participated substantially in the decision to refer him for disciplinary charges, then presided over the hearing that imposed sanctions. Howell points to a Third Circuit case that holds such a conflict would violate due process. *Meyers v. Alldredge*, 492 F.2d 296 (3d Cir. 1974). Eighth Circuit precedent appears to be the same. *Jensen v. Satran*, 651 F.2d 605, 607 (8th Cir. 1981) (remanding to determine, in part, whether disciplinary board included

a prison official who submitted petitioner's incident report); *compare Ivy v. Moore*, 31 F.3d 634, 635 (8th Cir. 1994) (hearing officer's independent investigation did not violate due process because it "was not done to prepare for prosecution of the charge[.]"). In the circumstances the Court declines the recommendation, *Document No. 11*, and returns the case to Judge Deere to consider this wrinkle.

So Ordered.



D.P. Marshall Jr.
United States District Judge



4 December 2012